State of Hawaii Department of Land and Natural Resources Division of Conservation and Resources Enforcement Honolulu, Hawaii

May 11, 2007

Board of Land and Natural Resources Honolulu, Hawaii

RE: Request Board Approval to Enter Into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement.

The purpose of this agreement is to facilitate the operations, administration, and funding for DOCARE to enforce Federal laws, and regulations under the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act of 1973, the Marine Mammal Protection Act 1972 and the National Marine Sanctuaries Act.

RECOMMENDATION:

ED FOR/SUBMITTAL:

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The Division of Conservation and Resources Enforcement requests approval of this *DRAFT* Joint Enforcement Agreement and asks that the Chairperson be authorized to approve the finalized agreement after review and approval as to form by the Office of the Attorney General. Changes recommended to DLNR by the Attorney General's Office would be incorporated into the final document in order to meet all State requirements.

Respectfully submitted,

GARY D. MONIZ

Enforcement Chief

Between
The State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
And
The U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office for Law Enforcement

I. PURPOSE

The purpose of this Joint Enforcement Agreement (JEA) between the U.S. Department of Commerce, (DOC), National Oceanic and Atmospheric Administration, (NOAA), National Marine Fisheries Service, (NMFS) Office for Law Enforcement, hereafter "OLE," and the State of Hawaii, hereafter, "State," Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, hereafter "AGENCY," is to facilitate the operations, administration, and funding of the AGENCY to enforce Federal laws and regulations under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801, et seq.)(Magnuson-Stevens Act), the Endangered Species Act of 1973 (16 U.S.C. §1531, et seq.)(ESA), the Lacey Act Amendments of 1981 (U.S.C. §3371, et seq.)(Lacey Act), and the National Marine Sanctuaries Act (16 U.S.C. §1431, et seq.) (NMSA).

II. BACKGROUND AND SCOPE

The OLE has had a long-term relationship with the AGENCY, beginning in August 1992, with the signing of a Cooperative Enforcement Agreement. That agreement was updated in 2001. A previous JEA was entered into in 2006.

This JEA provides a framework plan for the enforcement of Federal and State fisheries regulations offshore of the State, between the OLE and the AGENCY. Central to this JEA is the prevention and detection of violations by federally deputized officers from the AGENCY. Key features of this jointly administered plan include an increased overt presence by the AGENCY to achieve higher levels of voluntary compliance with Federal regulations, the issuance of Federal funds by the OLE, and the processing through resolution of certain specified cases, which could be handled under either Federal or State law, or by the State under State law.

III. AUTHORITY

DOC/NOAA has authority to protect the Nation's fisheries and engage in fishery conservation and management activities under the Magnuson-Stevens Fishery Conservation Management Act

(Magnuson-Stevens Act) generally. DOC/NOAA is further authorized, under 16 U.S.C. §1861(a) to enforce provisions of the Magnuson-Stevens Act and, in conducting such enforcement, to utilize the personnel, services, equipment (including aircraft and vessels), and facilities of such State agencies on a reimbursable basis or otherwise.

DOC/NOAA has authority to protect the Nation's threatened and endangered species and engage in their conservation under the Endangered Species Act (ESA) generally. DOC/NOAA is further authorized, under 16 U.S.C. §1540(e) (1) to enforce provisions of the ESA and, in conducting such enforcement, to utilize the personnel, services, and facilities of such State agencies with or without reimbursement.

DOC/NOAA has authority to prevent illegal trafficking of fish and wildlife taken and/or possessed in violation of state, Federal, Indian tribal and foreign laws and engage in conservation and management activities under the Lacey Act Amendment (Lacey Act) generally. DOC/NOAA is further authorized, under 16 U.S.C. §3375(a) to enforce provisions of the Lacey Act and, in conducting such enforcement, to utilize the personnel, services, and facilities of such state agencies with or without reimbursement.

DOC/NOAA has authority to protect the Nation's national marine sanctuaries and engage in conservation and management activities under the National Marine Sanctuaries Act (NMSA) generally. DOC/NOAA is further authorized under 16 U.S.C. §1437(h), to enforce provisions of the NMSA and, in conducting such enforcement, to utilize the personnel, services, and facilities of such State agencies on a reimbursable basis or otherwise.

The State of Hawaii has authority to conduct the activities contemplated by this agreement under the Hawaii Revised Statutes Section 199-3(a)(3), which authorizes DLNR to enter into cooperative agreements with federal agencies to promote wildlife management, conservation, and research.

IV. TERMS

A. All enforcement activities under this JEA shall be conducted in compliance with the CEA between the NMFS and the AGENCY effective November 2001. Section I of the CEA provides for the "Deputization of State/Territory officers as Federal Enforcement Agents." Said CEA further states that:

All Officers, while acting as Federal law enforcement agents under this agreement, shall possess the powers and authorities set forth in the MSFCMA, ESA, MMPA, and the Lacey Act . . .

In Section III A, the CEA states that:

To meet its law enforcement responsibilities under any of the Acts listed in this agreement, and consistent with the provisions of these Acts, OLE may execute contracts and other agreements with the State to provide funds in exchange for the use or services of the State's law enforcement personnel, vessels, aircraft, vehicles and/or other equipment. These contracts and other agreements shall be negotiated separate from this Agreement.

- B. The AGENCY agrees to provide, on a reimbursable basis and/or otherwise, the following personnel, services, equipment, and facilities:
 - 1. Trained, equipped, and federally deputized officers to patrol offshore, near shore, and dock-side in AGENCY patrol boats and vehicles as defined in the Operations Plan (attached). Their focus will be to determine compliance with Federal fishing regulations and other Federal laws and regulations as specified in the Operations Plan.
 - 2. The AGENCY will provide 2820 hours under this agreement. The minimum hours of patrol time and officers deployed for each patrol are specified in the Operations Plan. Operational considerations will dictate the number of officers deployed for each patrol. The AGENCY will be available to provide these vessels with crews for operations requested by the OLE.
 - a. The ability of the AGENCY to operate within the Operations Plan will be subject to limitations which include but are not limited to: weather conditions, mechanical problems, compliance with the Federal Fair Labor and Standards Act, and emergency deployment due to natural disasters or civil disturbances.
 - b. During these patrols, AGENCY officers will log all contacts made with fishing vessels. Boarding forms will include date of check, location of boarding, vessel name and/or registration/documentation number, vessel captain, and number of persons onboard. The boarding forms will be available to the OLE for purposes of determining compliance of the user groups with Federal fishing regulations and to monitor AGENCY performance under the terms of this JEA.
 - 3. AGENCY will purchase the following equipment/services for use under this agreement:

1.	Replace 2 outboard engines, gauges, and controls	\$25,000
2.	16 Digital Cameras and Accessories	\$5,200
3.	One RAIV 18' Patrol Boat (JEA Half Cost)	\$30,000
4.	Three Desktop Computers	\$6,000
5.	Yamaha Jet Ski and Trailer	\$13,500

6. Three Laser Jet Printers \$2,700
7. One 2007 Chevy Tahoe/4wd/with tow package \$26,000

- 4. a. AGENCY officers will enforce Federal fisheries laws guided by the jointly agreed upon priorities as outlined in the Operations Plan. Those cases whose resolution will be handled by the State, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, are referenced in paragraph 5 below and further outlined in the Operations Plan.
 - b. Through the contacts provided in the Operations Plan, the AGENCY will immediately contact the OLE upon the detection of any other case involving Federal laws under which the OLE has authority, including but not limited to the Magnuson-Stevens Act, the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the National Marine Sanctuaries Act, and upon the documentation of those cases outlined in the Operations Plan that involve aggravating circumstances.
- 5. a. The AGENCY will handle as appropriate through resolution, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, in its court system, or in any subordinate court or administrative system with appropriate jurisdiction within the State, all cases which may be handled under State law only, and certain cases which may be handled under either Federal or State law, whether such cases originate in State or Federal waters, as specified in the Operations Plan. The parties anticipate that these types of cases comprise many, if not most, of the violations that will be detected.
 - b. Additionally, the AGENCY will handle as appropriate all cases which do not comply with Federal procedures and guidelines, practices, laws, and regulations, which are outlined in the Operations Plan.
 - c. The State hereby certifies that it has the authority and jurisdiction to so handle such cases as outlined in paragraphs 5(a) and (b), above.
 - d. Upon contact/notification as outlined in paragraph 4(b) above, a determination of whether the State or the OLE will handle the case will be made jointly with the regional NOAA General Counsel for Enforcement and Litigation and the appropriate State attorney.
- 6. For those cases involving violations of Federal fisheries or protected resources related laws (ie., ESA, NMSA, and the Lacey Act) detected by AGENCY officers that will be prosecuted federally, whether administratively, civilly, or criminally, the basic procedures are as follows:

- a. The cases will be documented using AGENCY forms or other forms as jointly agreed to by the AGENCY and the OLE and then provided to the OLE at the earliest practical date and within statutory and regulatory guidelines as outlined in the Operations Plan. The OLE will accept for review those cases which are properly prepared for Federal action and meet all applicable Federal procedures and guidelines, practices, law, and regulations as outlined in the Operations Plan.
- b. To the extent agreed upon in advance or as requested by the OLE Special Agent(s), AGENCY officers will conduct follow-up investigations of any Federal violation forwarded for Federal action. These investigations may include obtaining documents, researching records, conducting surveillance and conducting interviews. The AGENCY will work closely with the local OLE Special Agent(s) to ensure a good flow of information and to address current areas of concern by the OLE and/or the Federal administrative, civil and/or criminal attorney(s).
- c. When necessary, AGENCY officers will be made available to testify in Federal administrative and judicial proceedings. The OLE will pay the approved cost of travel for all AGENCY officers to assist the OLE in any Federal administrative or judicial proceeding.
- 7. The AGENCY will incorporate JEA funding to develop and distribute promotional and educational material for their community oriented policing project. The materials will inform the public of the problems the various living marine resources are encountering. It will also inform the public of the importance of reporting suspected abuses and possible violations of existing State and Federal laws and regulations. AGENCY officers will distribute the material at tournaments, public appearances, sportsmen and boat shows, fishing tackle shops, and through their programs.
- 8. AGENCY will incorporate JEA funding to supervise, plan, implement, monitor, and develop required documentation for this JEA.
- 9. The AGENCY will cooperate with the OLE to produce a complete annual report of the JEA. JEA funds will be utilized to develop annual reports, quarterly reports, provide monthly summaries, and invoices for activities.
- 10. The points of contact for the OLE and for the AGENCY for all issues arising in conjunction with the performance of this JEA are specified in the Operations Plan.

V. MEASUREMENT OF PERFORMANCE OBJECTIVES

The AGENCY will record all patrol and enforcement activity using the OLE web-based database on at least a monthly basis. In addition, an annual report will be produced, published, and forwarded to the OLE within 90 days after the expiration of this Agreement.

VI. FUNDING

The OLE transfers \$299,989.00 to the AGENCY. All responsibilities under this JEA are subject to the availability of appropriated funds. The AGENCY will, within 30 days of the purchase of any equipment, service, or property, provide copies of proof of purchase to the OLE for direct purchases agreed to in Art. IV, Section 3. Funds transferred pursuant to this JEA are available until September 30, 2009.

VII. PERIOD

This JEA becomes effective on the date when signed by all parties. The agreement terminates one (1) year from the effective date. It may be terminated before that date by mutual agreement of the parties. Any funds not obligated before expiration or termination of this JEA must be returned to the OLE. In the alternative, the AGENCY may request the OLE, at least 30 days prior to the expiration or termination of this JEA, to extend the term of this JEA.

The OLE may, at its sole discretion and so long as this JEA has not expired and the money is still available, agree to extend the term of the JEA to any date up to September 30, 2009, the expiration of the availability of the funds. Any funds remaining after that date not expended must be promptly returned to the OLE.

VIII. RECORD RETENTION/ACCESS

The AGENCY shall keep such records that relate to work conducted under this agreement as deemed necessary by the Department of Commerce, National Marine Fisheries Service, Office for Law Enforcement. Upon written request, the AGENCY will make available to the OLE, within three (3)

business days, copies of all records, invoices or other evidence of payments to third parties for all work and services performed for the OLE under this agreement.

IX. AUDIT, EXAMINATION, AND REVIEW

Representatives of the Department of Commerce, its Office of Inspector General, and the Office for Law Enforcement shall have access, for the purpose of audit, examination, and review, to any books, documents, papers, and records of the AGENCY that relate to the work conducted under this agreement.

X. MODIFICATION AND CANCELLATION

The provisions of this JEA may be modified by amendment subject to written agreement of both parties. Modifications relating to increased funding require a detailed account.

Within the rate structure attached, and in furtherance of the overall goal to maximize the efficiency of enforcement operations, both parties to this JEA recognize that the AGENCY may have to increase the amount of hours expended in one category and correspondingly decrease operations in another category. It may, for example, be necessary to increase offshore patrol hours and decrease dockside hours to properly address a particular poaching threat from violators determined to steal the living marine resources this JEA is dedicated to protect. Estimates for the amount of legal assistance may increase or decrease. This JEA recognizes and encourages that flexibility.

IX. OTHER PROVISIONS

State of Hawaii

Nothing herein is intended to conflict with any current DOC, NOAA, NMFS, or State directive. If any provisions of this JEA are inconsistent with such directives, those portions of this JEA that are inconsistent shall be invalid, but the remaining terms and conditions shall remain in full force and effect. At the first opportunity for review of the JEA, all necessary changes will be accomplished by either an amendment to this JEA or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreements arise on the interpretation of the provisions of this JEA, or amendments, and/or revisions thereto, that cannot be resolved at the operating unit level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Dale J. Jones	Date
Chief, Office for Law Enforcement	
National Marine Fisheries Service	
National Oceanic & Atmospheric Administration	
Peter T. Young	Date
Chairperson, Board of Land and Natural Resources	

APPROVAL TO FORM:		
Deputy Attorney General, State of Hawaii	Date	_

Operation Plan State of Hawaii 2007 Joint Enforcement Agreement

I. PURPOSE

The purpose of this Operations Plan is to set forth the specific operational requirements necessary to earry out the provisions of the Joint Enforcement Agreement (JEA) between the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office for Law Enforcement, hereafter "OLE," and the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, hereafter referred to as "AGENCY." Further, this Operations Plan explains the methods by which compliance is to be accomplished. II. SCOPE OF PLAN

This Operations Plan identifies the Federal priorities targeted for increased enforcement under the JEA, explains, describes, and elaborates upon the work to be performed by the AGENCY, describes the equipment, services, or property that will be purchased with JEA funds, mandates reporting requirements, sets forth enforcement guidelines,

III. DESCRIPTION OF WORK TO BE PERFORMED

Subject to the availability of appropriate funding, the AGENCY will provide the OLE with fully trained, equipped and Federally deputized officers to patrol offshore, near shore, and dockside using AGENCY equipment to determine compliance with Federal law and regulations. Further, the AGENCY will provide such officers to conduct community oriented policing & problem solving (COPPS) activities. The OLE and the AGENCY have identified the following Federal enforcement priorities that will be addressed and the work that will be performed during the term of the JEA. A detailed explanation of direct personnel costs is contained in the Costing Plan attached hereto.

A. Priority 1 Protected Species (includes Monk Seals, Humpback Whales, Sea Turtles, etc.)

Total man hours

Off Shore/At Sea Activities:

Monitor for and investigate illegal takes and other violations involving the endangered/threatened species.

Schedule/Season:

All year

Man hours:

250 (100 vessel hours)

Near Shore (land) Activities:

Monitor for and investigate illegal takes and other violations involving the endangered/threatened species.

Schedule/Season: All year

Man hours:

630

B. Priority 2 Federal Fishery - Federally Permitted Commercial Fishing Vessels Total man hours for priority - 700

Dockside Activities:

Conduct dockside boardings of federally permitted fishing vessels to ensure compliance, or investigate violations of, Federal and

State fishery laws and regulations.

Schedule/Season:

All year 700

Man hours:

C. COPPS (Outreach)

Total man hours- 100

Activities: AGENCY officers will conduct public outreach and education efforts to help educate the public about Federal and State conservation and fishery

Operation Plan
State of Hawaii

V. EQUIPMENT, SERVICES, OR PROPERTY

The AGENCY will purchase the following equipment, services, or property with JEA funds. A detailed explanation is set forth in the Costing Plan attached hereto.

A. Equipment:

1.	Replace 2 outboard engines, gauges, and controls	\$25,000 .
2.	16 Digital Cameras and Accessories	\$5,200
3.	One RAIV 18' Patrol Boat (JEA Half Cost)	\$30,000
4.	Three Desktop Computers	\$6,000
5.	Yamaha Jet Ski and Trailer	\$13,500
6.	Three Laser Jet Printers	\$2,700
7	One 2007 Chevy Tahoe/4wd/with tow package	\$26,000

B. Item Usage

- 1). Replacing of two outboard engines for an Oahu based patrol boat will allow that boat to be put back into patrol status. The boat will then be used in part to conduct sea patrols geared at protecting endangered and threatened species, and identifying potential violations in regards to those protected resources. These patrols may vary from whale approach patrols, to patrolling near shore and off shore waters.
- 2). The digital cameras and camera accessories will be distributed to the Kauai, Maui, and Oahu branches. This equipment will allow AGENCY officers to photographically document potential violations of Federal and state protected resource related laws and regulations.
- 3). The RAIV patrol boat will be purchased for the Hawaii branch. JEA funds will be used to pay for around half of the cost of the patrol boat. Once deployed, the boat will then be used in part to conduct sea patrols geared at protecting endangered and threatened species, and identifying potential violations in regards to those protected resources. These patrols may vary from whale approach patrols, to patrolling near shore and off shore waters.
- 4). The desktop computer systems will be distributed to the Kauai branch, and will be available for officer use. The systems will facilitate the officers in typing reports, to include reports of potential violations of Federal laws enforced under the JEA.
- 5). The Jet ski and trailer will be purchased for the Maui branch. This watercraft will allow officers to operate in shallow waters which a deeper draft vessel could not.
- 6). The laser jet printers will be distributed to the Oahu and Kauai branches. The printers will allow AGENCY officers to print out reports and other documents needed to carry-out the JEA mission.
- 7). The 2007 Chevy Tahoe will be purchased for the Oahu branch. The vehicle will be used by officers conducting near shore and dockside patrolling. The vehicles 4wd capability will assist officers in getting to off-road/remote shoreline locations to facilitate in the protection of endangered and threatened species, such as getting to sea turtle haul-out areas. The vehicle will also be used to tow the smaller and medium sized vessels in the AGENCY fleet as well as transporting crew and equipment to the launch facility.

It is anticipated that the above equipment will be used on a year-round basis to support the also support State conservation mission areas,

VI. ENFORCEMENT GUIDELINES

- A. The patrols will occur on a year-round basis according to a schedule agreed to by the AGENCY and the OLE. During the patrols, AGENCY officers will log all contacts made with fishing vessels, including the date, location, name of the vessel, activity, number of persons aboard the vessel and, if obtained, the names of any persons who were aboard the vessels that were contacted. This log will be made available to the OLE at the conclusion of each patrol for purposes of determining compliance by fishers with Federal fishing regulations, and to monitor AGENCY performance under the terms of this agreement.
- B. The resolution of cases documented by the AGENCY is a key element of the JEA and Operations Plan. As outlined in the JEA, AGENCY officers will enforce Federal fisheries and protected resources related laws (ie., Endangered Species Act, the National Marine Sanctuaries Act, and the Lacey Act) guided by the mission statement and the jointly agreed upon priorities as outlined above. Those cases whose resolution will be handled by the State, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, are referenced below. Through the contacts provided below, the AGENCY will immediately contact the OLE upon the detection of any other case involving Federal laws under which the OLE has authority, including but not limited to the Magnuson-Stevens Act, the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the National Marine Sanctuaries Act, and upon the documentation of those cases.
- C. The AGENCY will handle as appropriate through resolution, e.g., by administrative, civil and/or criminal prosecution, restitution, or otherwise, in its court system, or in any subordinate court or administrative system with appropriate jurisdiction within the State, all cases which may be handled under State law only, and certain cases which may be handled under either Federal or State law, whether such cases originate in State or Federal waters. The parties anticipate that these types of cases comprise many, if not most, of the caseload of violations that may be detected.
- D. Additionally, the AGENCY will handle as appropriate all cases which do not comply with Federal procedures and guidelines, practices, law, and regulations.
- E. The State hereby certifies that it has the authority and jurisdiction to so handle such cases as outlined above.
- F. The AGENCY will immediately contact the OLE upon documentation of any other case involving Federal laws under with NOAA has authority, including but not limited to the Magnuson-Stevens Act, the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the National Marine Sanctuaries Act, and upon the documentation of those cases that involve aggravating circumstances. A determination of whether the State or the OLE will handle the case will be made jointly with the regional NOAA General Counsel for Enforcement and Litigation and the appropriate State attorney.
- G. For those cases involving violations of Federal fisheries or protected resources related laws detected by AGENCY officers that will be prosecuted federally, whether administratively, civilly, or criminally, the basic procedures are as follows:
 - 1). The cases will be documented using forms or other forms as jointly agreed to by the AGENCY and the OLE and then provided to the OLE at the earliest practical date and within statutory and regulatory guidelines. The OLE will accept for review those cases which are properly prepared for Federal action and meet all applicable Federal procedures and guidelines, practices, law, and regulations.
 - 2). To the extent agreed upon in advance or as requested by the OLE Special Agent(s), AGENCY officers will conduct follow-up investigations of any Federal violation forwarded for Federal action. These investigations may include obtaining documents, researching records, conducting surveillance and

Operation Plan State of Hawaii

conducting interviews. The AGENCY will work closely with the local OLE Special Agent(s) to ensure a good flow of information and to address current areas of concern by the OLE and/or the Federal administrative, civil and/or criminal attorney(s).

3). When necessary, AGENCY officers will be made available to testify in Federal administrative and judicial proceedings. The OLE will pay the approved cost of travel for all AGENCY officers to assist the OLE in any Federal administrative or judicial proceeding.

VII. CONTROLLING STATUTES, REGULATIONS, ETC.

For purposes of this JEA and Operations Plan, Federal procedures and guidelines, practices, and law may include but are not limited to the following:

The Magnuson-Stevens Act, the Endangered Species Act, the Lacey Act, the National Marine Sanctuaries Act, the Freedom of Information Act, the Privacy Act, and regulations and notices issued there under;

In addition to the regulations above, all other regulations and notices issued under the authority of DOC, including but not limited to:

15 C.F.R. Part 904; 50 C.F.R. Parts 600, 622, 644 and 678; The Civil Asset Forfeiture Reform Act of 2000 (CAFRA); The Small Business Regulatory Enforcement Fairness Act (SBREFA); Applicable DOJ provisions.

VIII. CONTACTS

For AGENCY:

Primary-Enforcement Chief

Gary D. Moniz (808) 587-0066

gary.d.moniz@hawaii.gov

Secondary-

Assistant Chief David Gaud

(808) 587-0066

David.L.Gaud@hawaii.gov

For NMFS/OLE:

Primary-Assistant Special Agent in Charge

Sherrie Tinsley-Myers (808) 541-2728

Sherrie.Myers@noaa.gov Special Agent Jeff Pollack Secondary -

(808) 541-2730

Jeffrey.Pollack@noaa.gov

Attachments:

1) Costing Plan

2) Vendor Profile Form